Supreme Court, U.S.
FILED

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Docket No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

OREGON TAXPAYERS UNITED PAC,

Petitioner

v.

PHIL KEISLING, Oregon Secretary of State,

Respondent.

On Petition for Writ of Certiorari to the Oregon Supreme Court

Gregory W. Byrne
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56pp

Question Presented For Review

Does an Oregon statute which prohibits anonymous contributions to ballot measure campaigns violate the First Amendment guarantees of free speech and association?

Parties to the Proceedings Below and Related Entities.

The caption of the case contains the names of all parties to the proceeding in the court whose judgment is sought to be reviewed. Respondent is the Secretary of State of the State of Oregon. Neither party has a parent company or subsidiary.

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Citation of Opinions below.

The trial court opinion is not published and is contained in the Appendix. The Oregon Court of Appeals opinion is published at 143 Or App 537, 924 P2d 853 (1996). The Oregon Supreme Court denied review at 324 Or 488, 930 P2d 852 (1996).

Basis for Supreme Court Jurisdiction.

(1) Date judgment or order sought to be reviewed was entered:

The Oregon Supreme Court entered an order on December 24, 1996, denying review of an Oregon Court of Appeals decision entered September 18, 1996, which affirmed a judgment of the Circuit Court of the State of Oregon for the County of Marion entered on August 15,

1995.

(2) Statutory basis for jurisdiction: 28 United States Code § 1257 (the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution of the United States).

Constitutional Provisions and Statutes Involved

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Oregon Revised Statutes (pertinent text is set out in Appendix):

260.055 Accounts of contributions and expenditures; inspection; preservation of accounts.

260.063. Statements of political committees, other than principal campaign committees, for election other than general election;....

260.073. Statements of political committees, other than principal campaign committees, for general election;....

260.083 Contents of statements

260.102. Statements of persons reducing expenditure deficit.

Statement of the Case

Statement of Facts

This case arose after persons who were identified in Oregon public records as having contributed to petitioner's campaign to enact a ballot measure requiring public employees to contribute to their pensions were harassed and boycotted by government employees and their unions.

Oregon statutes require political committees to periodically file reports, or statements, of contributions received and expenditures made in connection with candidates for office or campaigns supporting or

opposing ballot measures.[1] A political committee must file three pre-election statements at specified intervals containing the names and addresses of contributors of $100 or more ($50 or more if a local campaign). It also must file a *post*-election statement listing contributions received after the election date. If the post-election statement shows an unexpended balance of contributions or an expenditure deficit, the committee must file supplemental statements annually until it files a statement containing no balance or no deficit. ORS 260.063, 260.073.

Petitioner is a political committee which does not support candidates, only ballot measures designed to

---

[1]A "political committee" is defined as two or more individuals, or a person other than an individual, that has received a contribution or made an expenditure for the purpose of supporting or opposing a candidate, measure or political party. ORS 260.005(14).

reduce state and local taxes. In 1994, it sponsored an initiative that would require government employees to contribute six percent of their salaries to their pension fund. Petitioner filed the required statements, which became public records by Oregon law. After the names and addresses of contributors of $100 or more were publicized, government employees and their unions retaliated by harassing and threatening them and boycotting their businesses. Some potential donors declined to support petitioner's ongoing activities for fear of reprisal.

Petitioner filed suit seeking a declaration that the contribution reporting statutes were unconstitutional under the First Amendment of the United States Constitution (and its counterpart in the Oregon

Constitution), and an injunction against respondent's requiring petitioner to disclose any information regarding contributors, without their express consent, other than the amount of their contribution and their respective occupations and counties of residence. After a trial at which witnesses testified to experiencing harassment, threats and loss of business, the court ruled that the statutes were constitutional both facially and, as petitioner had not proven a reasonable probability that such harassment would occur again, as-applied.

The Oregon Court of Appeals affirmed but declined to consider the merits of the case, holding instead that petitioner lacked "standing" to assert a constitutional protection belonging to its members. The Oregon Supreme Court declined to accept review.

Stage of Proceedings When Federal Question Was Raised

Petitioner's amended complaint in the Circuit Court of the State of Oregon for Marion County sought a declaratory judgment that ORS 260.055, 260.063, 260.073, 260.083 and 260.102, as applied to petitioner, violated the freedoms of speech and association guaranteed petitioners' contributors by the First and Fourteenth Amendments to the United States Constitution.

In its trial memorandum petitioner asserted that the statutes violate First Amendment guarantees of free speech and association, citing *Buckley v Valeo*, 424 US 1, 96 S Ct. 612, 46 L Ed 2nd 659 (1976); *Brown v. Socialist Workers '74 Camp. Comm.*, 459 US 87, 103 S

Ct 416, 74 L Ed 2d 250 (1982); *Tashjian v. Republican Party of Connecticut*, 479 US 208, 107 S Ct 544, 93 L Ed 2d 514 (1986); *FEC v National Conservative PAC*, 470 US 480, 105 S Ct 1459, 84 L Ed 2d 455 (1985); *First Interstate Bank of Boston v Bellotti*, 435 US 765, 790, 98 S Ct 1407, 55 L Ed 2d 707 (1978); and *Meyer v Grant*, 486 US 414, 425, 108 S Ct 1886, 100 L Ed 2d 425 (1988).

Trial took place on April 18 and 19, 1995. The trial judge took the case under advisement. On April 19, 1995, this Court decided *McIntyre v. Ohio Elections Comm'n*, 514 US ___, 115 S Ct 1511, 131 L Ed 2d 426 (1995), in which it held unconstitutional under the First Amendment an Ohio statute requiring political campaign literature to contain the name and address of its issuer.

On April 20, 1995, in a supplemental letter brief to the trial judge, petitioner argued that *McIntyre*

> "sets to rest any doubt as to the constitutionality of the statutes at issue in our case. If the author of campaign literature has a constitutional right to remain anonymous, the person who paid to have that literature printed also has that right."

On June 13, 1995, the trial judge ruled in a letter opinion that

> "the parties agree that in denying Plaintiff's earlier motion for summary judgment, the court held that the disclosure statutes in question are not facially unconstitutional under the provisions of the Oregon Constitution or the U.S. Constitution upon which Plaintiff relies. Whether or not that

was the express or implicit holding of the Court in ruling on Plaintiff's motion for summary judgment, the Court now so holds. The recent case of McIntire [sic] v. Ohio Elections Commission, 115 S Ct 1511, is not to the contrary.

"Although the McIntire Court invalidated an Ohio statute which required the author of a political leaflet or handbill to disclose her identity, and imposed a criminal sanction upon her for her failure to do so, the Court was careful to clearly distinguish between personal or "independent" political speech and political speech in the form of membership in and financial support of organizations or associations engaged

in political speech. The Court held that the blanket requirement of the Ohio statute for self-disclosure by one engaged in personal political speech was an overbroad and impermissible impairment of the First Amendment guarantee of free speech. The case at hand does not involve any personal or "independent" speech. Rather, it involves political speech indirectly expressed through financial support of the Plaintiff. McIntire, therefore, is not in point.

"The other cases cited by Plaintiff to establish the facial unconstitutionality of the reporting statutes in question also are not on point because those cases involved laws imposing direct prohibitions of or direct limitations on the

expression of political speech. The statutes under attack impose no direct prohibitions of or limitations on political speech. They merely require the disclosure of the identity of persons who indirectly manifest political speech through financial support of organizations like the Plaintiff.

"Notwithstanding that the subject statutes are facially constitutional, they nevertheless may be unconstitutional as applied to the Plaintiff if it is probable that the mandated disclosure of the names, address and occupations of Plaintiff's contributors probably will result in subjecting a significant number of the contributors to substantial economic or personal reprisals. Such a

result, although not commanded by the laws in question, nevertheless would directly flow from their application and would constitute an impermissible infringement of the state and Federal constitutional rights of Plaintiff's contributors. However, the evidence simply does not establish the probability of such future retaliatory action.

"Although Plaintiff espouses a general philosophy of minimizing the size of government and reducing government expenditures, the specific measures which Plaintiff may successfully initiate or may support in the future are unknown at this time, as is the reaction of the public or any segment of the public to such measures. The

evidence establishes that among the measures which Plaintiff has initiated or supported in the past, only Measure Eight has produced a significant retaliatory action against Plaintiff's contributors. Thus, it is simply a matter of speculation as to how the public will react to Plaintiff's future actions in initiating or supporting particular ballot measures. Consequently, Plaintiff has not proved that the future application of the laws in question would be unconstitutional as applied to Plaintiff and Plaintiff's contributors.

"The Court rules that Plaintiff is not exempted from the disclosure requirements of the statute in question and that Plaintiff therefore is not entitled to injunctive relief against the

Defendant."

On appeal to the Oregon Court of Appeals, petitioner argued that the challenged statutes "violate the freedom of speech guarantee of the First Amendment of the United States Constitution," citing *McIntyre v. Ohio Elections Comm'n, supra.* (Appellants Brief and Abstract of Record at 13). The Court of Appeals affirmed the trial court. *Oregon Taxpayers United PAC v. Keisling*, 143 Or App 537, 924 P2d 853 (1996). The court acknowledged that

> "[petitioner] argued [at trial] that the disclosure statutes violate the rights of its approximately 3,000 members to freedom of expression as guaranteed by both the state and federal constitutions...." 143 Or App at 539.

Nevertheless, it held that Oregon's declaratory judgment statute (ORS 28.020) "does not allow an organization to assert the rights of its members," and therefore petitioner "lacks standing to assert the constitutional claims of its members in this case." 143 Or App at 544-545.

Petitioner then petitioned the Oregon Supreme Court to review the Court of Appeals' decision. In its petition for review, petitioner contended that the lower court erred in holding that petitioner could not assert the constitutional rights of its members, and also contended:

> "Statutes which condition contributions to a ballot measure campaign on disclosure of the contributor's identity violate the First Amendment to the United States Constitution because they regulate political expression without serving an

overriding state interest." (Petition for Review, at 2).

On December 24, 1996, the Oregon Supreme Court issued an order stating: "The Court has considered the petition for review and orders that it be denied."

Reason Relied On for Allowance of Writ

The Oregon circuit court has decided an important question of federal constitutional law that has not been, but should be, settled by this Court. That question is whether the First Amendment, which protects of the anonymity of persons who distribute literature in ballot measure campaigns, *McIntyre v. Ohio Elections Comm'n*, *supra*, also protects the anonymity of persons who contribute money to such campaigns.

In *McIntyre*, the Court held an Ohio statute which required that political campaign literature contain the name and address of its issuer unconstitutionally overbroad as regulating speech. The Court applied a strict scrutiny test because the statute regulated a category of speech that "occupies the core of the protection afforded by the First Amendment." 131 L. Ed. 2d at [439]. Ohio's statute did not pass the test as it was not narrowly tailored to serve an overriding state interest.

This Court has held that contributions to political campaigns are a form of expression entitled to First Amendment protection. *Buckley v Valeo*, 424 US 1, 21-25, 96 S Ct. 612, 46 L Ed 2nd 659 (1976). *Buckley* admittedly upheld disclosure requirements in the Federal

Election Campaign Act of 1971 that are similar to the ones at issue here, but there are more compelling reasons for identifying contributors to candidates than contributors to ballot measure campaigns.

In *Buckley*, the Court found the government's interests in exposing a candidate's source of support, preventing corruption, and detecting violations of contribution limits sufficiently important to outweigh the regulation of speech involved. 424 US at 69-70. Those interests are not present here. Oregon does not limit contributions to ballot measure campaigns, and the state's concern for corruption of officeholders does not arise in such campaigns, *McIntyre*, 131 L. Ed. 2d at [444-445].[2]

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[2] *See, also, First Interstate Bank of Boston v Bellotti*, 435 US 765, 790, 98 S Ct 1407, 55 L Ed 2d 707 (1978)("The risk of corruption

The only state interest that can be asserted to justify such a law is informing the electorate of any "special interests" that might be supporting or opposing a ballot measure. In *McIntyre*, the Court found such interest "plainly insufficient to support the constitutionality of [Ohio's] disclosure requirement." 131 L. Ed. 2d at [441]. Such regulation of the content of the message, *i.e.*, requiring the inclusion of the issuer's name in the document, "adds little, if anything, to the

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corruption perceived in cases involving candidate elections...simply is not present in a popular vote on a public issue"); and *FEC v National Conservative PAC*, 470 US 480, 496-497, 105 S Ct 1459, 84 L Ed 2d 455 (1985) ("[P]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances").

reader's ability to evaluate the document's message." *Id.* If that is true of a document's author, it must be true of its financial supporters.

Petitioner argued below that the electorate would be adequately informed by a more narrowly-tailored statute requiring disclosure only of a contributor's occupation and county of residence. Voters could decide on that information whether a measure is being supported by a particular industry or profession or geographic interest. A person's name and street address adds little if anything to the voter's knowledge. Moreover, the state's asserted interest in informing the electorate scarcely justifies compelling disclosure of the names and addresses of persons who make contributions *after* an

election, as Oregon's statute requires.[3]

Advocacy of a politically controversial viewpoint in the heat of a ballot measure contest is "the essence of First Amendment expression... No form of speech is entitled to greater protection...." *McIntyre*, 131 L. Ed. 2d at [440]. In *Meyer v Grant*, 486 US 414, 425, 108 S Ct 1886, 100 L Ed 2d 425 (1988), the Court struck down a Colorado law which prohibited paid initiative petition circulators, holding that

> "the statute trenches upon an area in which the importance of First Amendment protections is 'at

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[3]Ohio also asserted an interest of preventing fraudulent and libelous statements, which the Court held was adequately addressed under other statutes. *McIntyre*, 514 US at [443]. That interest is irrelevant to contributions.

its zenith.' For that reason the burden that Colorado must overcome to justify this criminal law is well-nigh insurmountable." (emphasis added).

In *McIntyre*, the Court honored "a respected tradition of anonymity in the advocacy of political causes." 131 L. Ed. 2d at [437]

"Anonymity...provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." 131 L. Ed. 2d at [437].

This rationale is just as applicable to the person who pays to have the message published.

A citizen who espouses a political point of view

in connection with a ballot measure should be entitled to remain anonymous. It should not matter whether that citizen authors the message or pays for its dissemination.

Respectfully submitted,

Gregory W. Byrne

Counsel of Record for Petitioner

APPENDIX

1. Opinion entered in conjunction with judgment sought to be reviewed:

State of Oregon

Robert B. McConville

Senior Judge

State of Oregon

June 13, 1995

Mr. Gregory W. Byrne

Attorney at Law

900 S.W. Fifth, Suite 1200

Portland, Oregon 97204-1221

Mr. Kendall M. Barnes

Assistant Attorney General

11762 Court Street NE, #450

Salem, OR 97310

Dear Counsel:

Re: Oregon Taxpayers v. Honorable Keisling, Case No. 93C13664

The Court rules that Plaintiff has standing to assert the constitutional rights of its contributors, the Court further rules that Plaintiff's claim for declaratory and injunctive relief presents a justiciable controversy between Plaintiff and Defendant because of the continuing reporting requirements imposed upon Plaintiff with respect to its past activities, and the evidence adduced by Plaintiff concerning economic reprisals taken against some of Plaintiff's contributors by reason of their

actual or perceived support of Plaintiff's sponsorship of Ballot Measure Number Eight in the last election.

Turning to the merits of Plaintiff's claim, the parties agree that in denying Plaintiff's earlier motion for summary judgment, the court held that the disclosure statutes in question are not facially unconstitutional under the provisions of the Oregon Constitution or the U.S. Constitution upon which Plaintiff relies. Whether or not that was the express or implicit holding of the Court in ruling on Plaintiff's motion for summary judgment, the Court now so holds. The recent case of McIntire v. Ohio Elections Commission, 115 S Ct 1511, is not to the contrary.

Although the McIntire Court invalidated an Ohio statute which required the author of a political leaflet or

handbill to disclose her identity, and imposed a criminal sanction upon her for her failure to do so, the Court was careful to clearly distinguish between personal or "independent" political speech and political speech in the form of membership in and financial support of organizations or associations engaged in political speech. The Court held that the blanket requirement of the Ohio statute for self-disclosure by one engaged in personal political speech was an overbroad and impermissible impairment of the First Amendment guarantee of free speech. The case at hand does not involve any personal or "independent" speech. Rather, it involves political speech indirectly expressed through financial support of the Plaintiff. McIntire, therefore, is not in point.

The other cases cited by Plaintiff to establish the

facial unconstitutionality of the reporting statutes in question also are not on point because those cases involved laws imposing direct prohibitions of or direct limitations on the expression of political speech. The statues under attack impose no direct prohibitions of or limitations on political speech. They merely require the disclosure of the identity of persons who indirectly manifest political speech through financial support of organizations like the Plaintiff.

Notwithstanding that the subject statutes are facially constitutional, they nevertheless may be unconstitutional as applied to the Plaintiff if it is probable that the mandated disclosure of the names, address and occupations of Plaintiff's contributors probably will result in subjecting a significant number of the contributors to

substantial economic or personal reprisals. Such a result, although not commanded by the laws in question, nevertheless would directly flow from their application and would constitute an impermissible infringement of the state and Federal constitutional rights of Plaintiff's contributors. However, the evidence simply does not establish the probability of such future retaliatory action.

Although Plaintiff espouses a general philosophy of minimizing the size of government and reducing government expenditures, the specific measures which Plaintiff may successfully initiate or may support in the future are unknown at this time, as in the reaction of the public or any segment of the public to such measures. The evidence establishes that among the measures which Plaintiff has initiated or supported in the past, only

Measure Eight has produced a significant retaliatory action against Plaintiff's contributors. Thus, it is simply a matter of speculation as to how the public will react to Plaintiff's future actions in initiating or supporting particular ballot measures. Consequently, Plaintiff has not proved that the future application of the laws in question would be unconstitutional as applied to Plaintiff and Plaintiff's contributors.

The Court rules that Plaintiff is not exempted from the disclosure requirements of the statute in question and that Plaintiff therefore is not entitled to injunctive relief against the Defendant.

The Court requests that Mr. Barnes prepared, serve and submit a judgment in conformity with this memorandum opinion.

Very truly yours,

Robert B. McConville

SENIOR JUDGE

2. Judgment Sought To Be Reviewed:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

OREGON TAXPAYERS	)	
UNITED PAC	)	
	)	No. 93C-13664
Plaintiff	)	
	)	

v.	)	JUDGMENT
	)	
PHIL KEISLING	)	
	)	
Defendant	)	

This case was tried before the Honorable Robert B. McConville, Senior judge, sitting without a jury, on the 17th and 18th days of April 1995. Plaintiff appeared by and through Gregory W. Byrne, of its attorneys, and defendant appeared by and through Kendall M. Barnes, Assistant Attorney General.

The attorneys made opening statements on behalf of their respective clients, introduced testimony and other evidence in support of their respective cases, and

thereafter rested. The attorneys then presented oral argument and subsequently submitted written argument with regard to the recent United States Supreme Court decision in McIntyre v. Ohio Election Comm'n. The court having considered the evidence and the arguments and memoranda of the parties, and being fully advised, on June 13, 1995, issued a Memorandum Opinion, a copy of which is attached to this judgment. The findings of fact and conclusions of law set forth therein are hereby entered of record pursuant to ORCP 62A.

In consideration of the premises, it is

ORDERED AND ADJUDGED that plaintiff's second amended complaint is hereby dismissed with prejudice, and defendant Phil Keisling shall have judgment against plaintiff Oregon Taxpayers United PAC

for its costs and disbursements.

DATED this 14 day of August, 1995.

/s/ Robert B. McConville

JUDGE

3. Oregon Statutes Being Challenged (pertinent text is emphasized):

260.055 Accounts of contributions and expenditures; inspection; preservation of accounts. (1) Each candidate, other than a candidate for political party office, and the treasurer of each political committee shall keep detailed accounts. The accounts shall be current as of not later than the seventh day after the date of receiving a contribution or making an

expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be reported under ORS 260.058, 260.063, 260.068, 260.073 or 260.078. Subject to ORS 260.085, *the accounts shall list all information required to be reported under ORS 260.083.*

(2) Accounts kept by a candidate or the treasurer of a political committee may be inspected under reasonable circumstances at any time before the election to which the accounts refer or during the period specified for retention of the accounts under subsection (3) of this section by any opposing candidate or the treasurer of any political committee for the same electoral

contest. The right of inspection may be enforced by writ of mandamus issued by any court of competent jurisdiction. The treasurers of political committees supporting a candidate may be joined with the candidate as defendants in a mandamus proceeding.

....

260.063 Statements of political committees, other than principal campaign committees, for election other than general election; supplement to second preelection statement; supplemental statements of unexpended balances and deficits; times for filing. (1) Except as otherwise provided in ORS 260.112, each political committee, other than a

candidate's principal campaign committee, supporting or opposing one or more candidates or measures at the primary election or any election other than the general election shall file the following with each appropriate filing officer:

(a) A first preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 39th day and not later than the 29th day before the date of the election....

(b) A second preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the eighth day and not later than the fifth day before the date of the election. The accounting

period for the statement required by this paragraph begins on the 39th day before the date of the election and ends on the ninth day before the date of the election.

(c) A supplement to the second preelection statement, on the day before the election, showing contributions, including loans, whether repaid or not, received by or on behalf of the political committee after the ninth day and before the day preceding the day of the election....

(d) A post-election statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 21st day and not later than the 30th day after the date of the election. The accounting

period for the statement required by this paragraph begins on the eighth day before the date of the election and ends on the 20th day after the date of the election....

(2) A political committee shall file a supplemental statement of contributions received and expenditures made by or on behalf of the political committee, if the post-election statement required by subsection (1)(d) of this section shows an unexpended balance of contributions or an expenditure deficit. A supplemental statement shall be filed annually not later than September 10, until a statement is filed containing no balance or no deficit....

260.073 Statements of political

committees, other than principal campaign committees, for general election; supplement to second preelection statement; supplemental statement for certain political committees; supplemental statements of unexpended balances and deficits; times for filing. (1) Except as otherwise provided in ORS 260.112, each political committee, other than a candidate's principal campaign committee, supporting or opposing one or more candidates or measures at the general election shall file the following with each appropriate filing officer:

(a) A first preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner

than the 39th day and not later than the 29th day before the date of the election. For a political committee that supported or opposed one or more candidates or measures at the primary election, the accounting period for the statement required by this paragraph begins on the 21st day after the primary election....

(b) A second preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the eighth day and not later than the fifth day before the date of the election. The accounting period for the statement required by this paragraph begins on the 39th day before the date of the election and ends on the ninth day before

the date of the election.

(c) A supplement to the second preelection statement, on the day before the election, showing contributions, including loans, whether repaid or not, received by or on behalf of the political committee after the ninth day and before the day preceding the day of the election....

(d) A post-election statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 21st day and not later than the 30th day after the date of the election. The accounting period for a statement required by this paragraph begins on the eighth day before the date of the election and ends on the 20th day after the date of

the election.

....

(3) A political committee shall file a supplemental statement of contributions received and expenditures made by or on behalf of the political committee, if the post-election statement required by subsection (1)(d) of this section shows an unexpended balance of contributions or an expenditure deficit. A supplemental statement shall be filed annually not later than September 10, until a statement is filed containing no balance or no deficit. The accounting period for a statement required under this subsection begins on the day following the last day of the accounting period for the previous statement filed and ends

on September 1.

260.083 Contents of statements. (1) A statement filed under ORS 260.058, 260.063, 260.068 or 260.073 shall list:

(a) Under contributions, all contributions received. Except as provided in ORS 260.085, the statement shall list the name, occupation and address of each person, and the name, address, identification number assigned under ORS 260.052 and primary nature of each political committee, *that contributed an aggregate amount of:*

(A) More than $100 on behalf of a candidate for statewide office, *regarding a statewide measure or to a political committee*

supporting or opposing only such a candidate or measure, and the total amount contributed by that person or political committee.

(B) More than $50 on behalf of a candidate for other than statewide office, *regarding a measure other than a statewide measure or to a political committee supporting or opposing such a candidate or measure*, and the total amount contributed by that person or political committee.

....

(d) All loans, whether repaid or not, made to the candidate or political committee. *The statement shall list the name and address of each person shown as a cosigner or guarantor on a*

loan and the amount of the obligation undertaken by each cosigner or guarantor. The statement also shall list the name of the lender holding the loan.

....

(5) As used in this section "address" includes street number and name, rural route number or post-office box, and city and state.

260.102 Statements of persons reducing expenditure deficit. A person who receives or expends money or any other thing of value, after the date of an election, for the purpose of reducing an expenditure deficit shown by a statement of contributions and expenditures filed by a candidate or treasurer, and who is not the candidate or treasurer and does not receive or

expend the money or other thing of value through the candidate or treasurer, shall file with the filing officer a statement showing the source of all money or other things of value so received or expended. *The statement shall list the name, occupation and address of each person, or the name, address and primary nature of each political committee, who contributed an aggregate amount of more than $100 on behalf of a candidate for statewide office or regarding a statewide measure, or more than $50 on behalf of a candidate for other than statewide office or regarding a measure other than a statewide measure.... As used in this section, "address" includes street number and name, rural route*

number or post-office box, and city and state.

(2)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Docket No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

OREGON TAXPAYERS UNITED PAC,

Petitioner

v.

PHIL KEISLING, Oregon Secretary of State,

Respondent.

Supplemental Appendix On Petition for Writ of Certiorari to the Oregon Supreme Court

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IN THE SUPREME COURT OF THE STATE OF OREGON

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UNITED PAC	)	ORDER DENYING
Appellant/Petitioner	)	REVIEW
v.	)	
PHIL KEISLING	)	CA A90002
Respondent/Respondent	)	SC S43792

The Court has considered the petition for review and orders that it be denied.

DATE: December 24, 1996.

/s/ WALLACE P. CARSON, JR.

WALLACE P. CARSON, JR.

CHIEF JUSTICE

Court of Appeals of Oregon.

Argued and submitted July 29, 1996.

Decided Sept. 18, 1996.

OREGON TAXPAYERS UNITED PAC, Appellant,

v.

Phil KEISLING, Respondent.

93C-13664; CA A90002.

Gregory W. Byrne, Portland, argued the cause and filed the briefs for appellant.

Rives Kistler, Assistant Attorney General, argued the cause for respondent. With him on the brief were Theodore R. Kulongoski, Attorney General, and Virginia L. Linder, Solicitor General.

Before RIGGS, P.J., and LANDAU and LEESON, JJ.

LANDAU, Judge.

Plaintiff is a political committee, organized to oppose what it regards as excessive taxation and to promote efficiency in state and local government. It initiated this action to obtain a declaration that certain statutes that require the disclosure of the identities of individuals who contribute to ballot measure campaigns are unconstitutional and also to obtain an injunction prohibiting defendant Secretary of State Phil Keisling from disclosing the names of plaintiff's members who contribute to measures it may support in the future. Plaintiff argued that the disclosure statutes violate the rights of its approximately 3,000 members to freedom of expression as guaranteed by both the state and federal constitutions, and that the requested injunction is

necessary to protect its members from future retaliation after disclosure of their support of measures that are unpopular with competing interest groups. Defendant urged dismissal of plaintiff's lawsuit on the ground that the political action committee lacked standing to assert the constitutional rights of its members. It also opposed plaintiff's action on the merits. The trial court ultimately concluded that, although plaintiff has standing to assert the rights of its members, the disclosure statutes are constitutional. Plaintiff appeals. We conclude that plaintiff lacks standing and affirm on that basis, without reaching the merits of the appeal.

ORS 260.055 requires all political committees to keep "detailed accounts" that include, among other things, the name, occupation and address of each person

who contributes more than $50 to a measure or to a candidate in a statewide race. Those accounts are subject to inspection by the treasurer of any political committee that becomes involved in the same electoral contest. Id. ORS 260.063 requires political committees to file with the office of the Secretary of State reports that show all contributions received and expenditures made in elections other than general elections. Those reports are to contain the same information concerning the name, occupation and address of contributors. ORS 260.083. ORS 260.073 requires the same information from political committees concerning contributions and expenditures in general elections.

Plaintiff initiated this action under the declaratory judgment statute, ORS 28.020, requesting that ORS

260.055, ORS 260.063 and ORS 260.073 be declared unconstitutional. Plaintiff alleged that all three statutes violate a variety of state and federal guarantees of freedom of expression and association. In six claims it alleged that the statutes violate those constitutional guarantees both facially and as applied to its individual members. Defendant answered and moved for summary judgment as to four of the six claims, including all those asserting a facial constitutional challenge. Plaintiff also moved for summary judgment on the same claims. The trial court granted defendant's motion and denied plaintiff's motion, and the case proceeded to trial on the two remaining "as-applied" claims.

At trial, counsel for plaintiff remarked in his opening statement: "I'm not here to seek the vindication

of the constitutional rights of Bill Sizemore or Oregon Taxpayers United as an organization. We're here to seek the vindication of the constitutional rights of these contributors, 3,000 strong." Plaintiff then presented evidence of what it perceived to be reprisals suffered by a number of its members after it became public knowledge that they had supported causes that plaintiff had promoted. At the conclusion of the evidence, defendant argued that plaintiff lacked standing to assert the constitutional rights of its members. In oral argument on the motion, counsel for plaintiff reaffirmed that: "It is our contention that such a requirement in the statute as applied to Oregon Taxpayers United violates the constitutional rights of our contributors * * *." Plaintiff asserted that it had the right to represent the

interests of those members. It acknowledged that no Oregon case has recognized the right of an organization such as a political committee to bring a declaratory judgment action on behalf of its members, but it argued that it still should be allowed to do so. The trial court issued a letter opinion in which it concluded that plaintiff "has standing to assert the constitutional rights of its contributors." The court then concluded that plaintiff had, however, failed to establish the unconstitutionality of the statutes as applied to those members.

[1] On appeal, plaintiff argues that the trial court erred in failing to declare the challenged statutes to be unconstitutional, both facially and as applied to its members. Defendant responds that the judgment of the court should be affirmed, but on the ground that plaintiff

lacks standing to assert the rights of its members. Defendant also supports the trial court's decision on the merits.

Shortly before oral argument, the Supreme Court issued its opinion in Local No. 290 v. Dept. of Environ. Quality, 323 Or. 559, 919 P.2d 1168 (1996), in which the court held that the state Administrative Procedures Act (APA) does not authorize a union to bring a petition for judicial review on behalf of its members. We allowed the parties' request for additional briefing on the relevance of that decision to the question of plaintiff's standing to assert the rights of its members in this case. [1] Defendant asserts that Local No. 290 demonstrates that, unless the statute under which a plaintiff brings an action authorizes "representational standing," the court cannot

permit an organization to invoke the authority of the court on behalf of its members. In plaintiff's view, Local No. 290 simply does not apply to this case, which arises under the declaratory judgment statute and not the APA. According to plaintiff, its "standing and right to raise the constitutional claims of its members is beyond dispute." In any event, plaintiff argues, it has direct standing "by the chilling effect the statutes have on potential contributors."

[1]. Also before oral argument, defendant requested that we take judicial notice of certain contribution and expenditure reports that plaintiff had filed since the issuance of the judgment. Plaintiff opposed the motion. In the light of our disposition of this case on standing grounds, we need not rule on that motion.

In Local No. 290, the Supreme Court explained that whether an organization has standing depends upon whether the statute under which the organization brings suit allows it to do so. It is, thus, a question of statutory construction, which involves ascertaining the legislature's intentions in accordance with the interpretive principles set forth in PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-12, 859 P.2d 1143 (1993). In Local No. 290, a union petitioned for judicial review of an agency action pursuant to ORS 183.484, which provides that a "petitioner" who has been "adversely affected or aggrieved" by an agency's order issued in other than a contested case may seek such review in the circuit court. The union brought the action on behalf of its members, challenging the validity of certain air and water discharge

permits issued by the Department of Environmental Quality to two local businesses. The union conceded that it was not itself "adversely affected or aggrieved" by the issuance of the permits and that it was instead challenging the issuance of the permits on behalf of its members.

The Supreme Court held that the union lacked standing to assert the interests of its members in its petition for judicial review. Applying the interpretive principles of PGE, the court looked to the text and context of the statute and found dispositive evidence of the legislature's intentions with respect to the union's asserted "representational standing": "ORS 183.484 makes no mention of 'representational' standing, and the statutory context does not support such an inference.

Indeed, that statute requires that the person bringing the petition show how that person is adversely affected or aggrieved. We are admonished not to add to a statute words that the legislature has omitted. In order to grant standing to the Union in these cases, we would have to violate that tenet of statutory construction, by adding a provision that a petition is sufficient if, although the petitioner is neither adversely affected nor aggrieved, the petitioner claims to be acting on behalf of another person who does meet one of those two criteria. It follows that, on the basis of the first-level inquiry under PGE, the legislative intent behind the standing provision in ORS 183.484 is clear." Local No. 290, 323 Or. at 567, 919 P.2d 1168 (citations omitted; emphasis in original).

With the foregoing principles in mind, we turn to

the statute on which plaintiff relies in this case, examining first the text and context. ORS 28.020 provides that "[a]ny person * * * whose rights, status or other legal relations are affected" by a statute may obtain a declaration as to his or her rights under that statute. As in Local No. 290, the text of the statute makes no mention of "representational standing." Indeed, the statute in this case requires that the person bringing the action be "affected" by the statute that is the subject of its challenge. Thus, as in Local No. 290, to read the statute to permit plaintiff to assert the rights of its members would require us to insert language into the statute that the legislature, whether by design or by default, has not included. We lack authority to do that. ORS 174.010; Fernandez v. Board of Parole, 137

Or.App. 247, 252, 904 P.2d 1071 (1995).

Plaintiff insists that the Supreme Court has, in fact, acknowledged "representational standing" under the declaratory judgment statute in three prior decisions, Rendler v. Lincoln Co., 302 Or. 177, 728 P.2d 21 (1986), Oregon State Police Assn. v. State of Oregon, 308 Or. 531, 783 P.2d 7 (1989), cert. den. 498 U.S. 810, 111 S.Ct. 44, 112 L.Ed.2d 20 (1990), and Automobile Club v. State of Oregon, 314 Or. 479, 840 P.2d 674 (1992). None of those decisions advances plaintiff's argument.

Rendler involved a special proceeding to determine whether a road had been abandoned. A "committee" of interested landowners petitioned to intervene, and the question presented was whether ORCP

33 C countenanced the intervention of an organization asserting the collective interests of all of its members. The Supreme Court held that it did. The court did not address whether an organization has standing to initiate a declaratory judgment action in the first instance on behalf of its members. Interestingly, Rendler was urged as a basis for upholding "representational standing" under the APA in Local No. 290. The Supreme Court confirmed the limited nature of the holding in Rendler that we have just described: "The decision was based on the discretionary standard in ORCP 33 C that permits a trial judge to allow intervention in a case by a 'person who has an interest in the matter.' So understood, it does not inform the present inquiry." Local No. 290, 323 Or. at 566, 919 P.2d 1168. Nor, for the same reason, does

Rendler inform our inquiry in this case.

In Oregon State Police Assn., an association and one of its officers sued for a declaration that a statute was unconstitutional. The issue of the standing of the organization was neither raised by the parties nor addressed by the court.

Automobile Club was an original proceeding before the Supreme Court in which the Automobile Club of Oregon and an individual business challenged the constitutionality of a statutory underground storage tank assessment. In a footnote, the Supreme Court did say that the club had standing. We are nevertheless unpersuaded that the decision compels acknowledgment of plaintiff's standing in this case. To begin with, the case did not arise under the declaratory judgment statute,

and, as the court cautioned in Local No. 290, "[w]hen it is ruling on a standing issue, a reviewing court must focus on the wording of the particular statute at issue, because standing is not a matter of common law but is, instead, conferred by the legislature." Local No. 290, 323 Or. at 566, 919 P.2d 1168. Moreover, the court's footnote in Automobile Club was dictum. The issue of the club's standing had not been raised by any party to the proceeding. Finally, and perhaps most important, in remarking that the club did have standing, the court expressly relied on its earlier decision in Rendler. The court has since disavowed reading Rendler more broadly than its particular facts; as we have noted, after Local No. 290, reliance on Rendler as a basis for recognizing a plaintiff's "representational standing" under a different

statute can no longer be regarded as correct.

[2] Given that ORS 28.020 does not allow an organization to assert the rights of its members, the disposition of this case is not difficult. Plaintiff repeatedly acknowledged that it is not attempting "to seek the vindication of the constitutional rights of * * * Oregon Taxpayers United as an organization." Instead, it is attempting "to seek the vindication of the constitutional rights of [its] contributors, 3,000 strong."

[3] Plaintiff does make a belated attempt to assert its direct standing, based on the "chilling effect the statutes have on potential contributors." Even assuming that we are at liberty to ignore plaintiff's earlier, categorical disavowals of any direct interest in the lawsuit, plaintiff's argument fails. First, plaintiff relies

on a "chilling effect" on its members. Plaintiff makes no argument that its own constitutional rights are affected adversely by the statutes that it challenges in this action. Second, that plaintiff is affected in some manner by the challenged statute does not give it the right to contend for the vindication of anyone's rights but its own. Plaintiff has never contended for its own rights in this case. Even in its post-argument briefing it steadfastly clings to its assertion that it is entitled "to raise the constitutional claims of its members." The declaratory judgment statute affords a person affected by a statute to seek a declaration of that person's own rights under that statute, not the rights of others. See Eacret et ux v. Holmes, 215 Or. 121, 125, 333 P.2d 741 (1958) ("[t]here is no case for declaratory relief where the

'plaintiff seeks merely to vindicate a public right * * * '

" (citations omitted)). We conclude, therefore, that plaintiff lacks standing to assert the constitutional claims of its members in this case, and for that reason the trial court's entry of judgment for defendant was not error.

Affirmed.